

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON - Chairwoman
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O'CONNOR

In the matter of:

PATRICK D. NILLES (CRD No. 4435443), a
single man,

Respondent.

DOCKET NO. S-21159A-21-0252

NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED,
ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES, AND
ORDER FOR OTHER AFFIRMATIVE
ACTION

NOTICE: RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondent Patrick D. Nilles has engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.**RESPONDENT**

2. Since at least 2011, Patrick Nilles ("Nilles"), CRD # 4435443, has been a single man and a resident of Arizona. From at least October of 2001, until January 11, 2002, Nilles was registered in the states of California, Illinois, and Wisconsin as a securities salesman with CRD No. 4435443 and was employed by registered securities dealer Ameriprise Financial Services, LLC, CRD No. 6363.

1 3. Nilles has not been registered with the Commission as a securities salesman or dealer.

2 4. Nilles may be referred to as "Respondent."

3 **III.**

4 **FACTS**

5 5. From at least December of 2018, through at least April of 2019, Nilles offered and
6 sold securities in the form of investment contracts, within or from Arizona to at least one investor
7 ("Investor"), who was a resident of Arizona. The Investor invested a total of \$75,000 in Nilles'
8 investment contracts. Nilles was supposed to invest, on behalf of the Investor, in the stock market. In
9 exchange, Nilles promised to pay the Investor 20–30% interest per annum. Nilles further promised the
10 Investor he would receive a 60/40 "profit split" (60% to the Investor and 40% to Nilles) on any profits
11 that Nilles made off the Investor's investments.

12 6. On or about September of 2018, Nilles introduced himself to the Investor, who lived
13 in the same apartment complex as Nilles in Scottsdale, Arizona. Nilles told the Investor that he was
14 an important person and Nilles boasted about his past financial success, and his prior work history
15 in the "trading world." Shortly thereafter, Nilles and the Investor developed a friendship. According
16 to Nilles, he and the Investor "hit it off from day one."

17 **A. Nilles' investment contracts**

18 7. Over the next few months, from October of 2018, through November of 2018, Nilles
19 and the Investor's friendship strengthened and the two became "close friends." During the above
20 relevant time-period, on several occasions Nilles represented the following to the Investor: (1) Nilles
21 had an investment opportunity for the Investor to invest in Nilles' hedge fund account; (2) Nilles ran
22 the hedge fund account for his family, friends, and himself; (3) Nilles, without disclosing the name
23 of the hedge fund, stated that the trades in the hedge fund account went from New York to London;
24 and (4) Nilles was making enough money from the hedge fund to live off. In reality, Nilles has not
25 managed a hedge fund since at least 2012.

26 ...

1 8. The Investor informed Nilles that he was not interested in Nilles' investment offer,
2 because the Investor was saving up his money in a savings account to buy a house and a car, by mid-
3 2020. Nilles represented to the Investor that the Investor was silly to let his money sit in a savings
4 account with 1–2% annual gains, when he [Nilles] could promise a 20–30% return annually. Also,
5 Nilles orally offered the Investor a 60/40 split of the earnings with no annual fees.

6 9. In December of 2018, Nilles offered the Investor another opportunity to invest in
7 Nilles' hedge fund account. The Investor informed Nilles that he wanted to take little to no risk with
8 his savings, because that money was important to the Investor's future. Nilles told the Investor not
9 to worry. Nilles represented to the Investor that for the past twenty-years he has never lost money in
10 the stock market. When in fact, in 2009, Nilles co-founded and managed an automated hedge fund,
11 which subsequently got "wiped out," and Nilles lost money in the stock market that year.

12 10. Nilles further represented to the Investor that Nilles would allocate all of the
13 Investor's fund into Nilles' trading account for the purpose of investing. According to Nilles, the
14 Investor's funds were supposed to be commingled with at least Nilles' funds in Nilles' trading
15 account. And, Nilles further represented to the Investor that at Nilles' sole discretion he would invest
16 the Investor's allocated funds into the "stock market" and generate profit on behalf of the Investor.

17 11. Based on Nilles' representations, the Investor decided to invest a portion of his
18 savings with Nilles. On or about December 5, 2018, the Investor drafted a \$10,000 personal check,
19 which was made out to Nilles to fund the Investor's investment. The Investor's check was received
20 by Nilles and deposited into Nilles' personal bank account. Nilles represented to the Investor that he
21 would handle the rest. Nilles further represented to the Investor that such a small investment amount
22 did not require any paperwork, because of their friendship and Nilles' trustworthiness.

23 12. At all times relevant, Nilles never provided the Investor with a prospectus, offering
24 documents, or written investment contracts. According to Nilles, he and the Investor verbally
25 discussed the purpose of the Investor's funds and that Nilles was going to invest the Investor's funds

26 ...

1 in the stock market. Further according to Nilles, he had drafted "an investment contract ... we [Nilles
2 and the Investor] just never signed anything."

3 13. From January of 2019, through March of 2019, the Investor made two additional
4 investments in Nilles' investment contracts, in the total amount of \$15,000. For each of the additional
5 investments, the Investor drafted a personal check made out to Nilles to fund the Investor's
6 investments. Both checks were received by Nilles. One of the checks was deposited into Nilles'
7 personal bank account, and the other check was negotiated at the Investor's bank and Nilles received
8 the funds.

9 14. On or about April of 2019, Nilles met with the Investor to discuss the 1st quarter gains
10 of the Investor's investments. During the discussion, Nilles provided the Investor with a 1st Quarter
11 Report, which neither contained a trading account number nor the name of Nilles' trading account.
12 Also, the 1st Quarter Report did not indicate the broker-dealer that held Nilles' trading account. Nilles
13 represented to the Investor that the gains were small; however, Nilles further represented to the
14 Investor that there were going to be exciting times ahead and opportunities to really make money in
15 the next quarter or two. Nilles further represented to the Investor that if he invested more money the
16 Investor's returns would be much higher.

17 15. The Investor informed Nilles that he did not want to invest additional funds in Nilles'
18 investment contracts, because the Investor did not want to put the remainder of his savings at risk.
19 Nilles represented to the Investor that Nilles would continue to keep the Investor in light risk
20 investments. The Investor asked Nilles to define light risk investments. Nilles responded and
21 analogized light risk investments in baseball terms; Nilles represented to the Investor that he would
22 only be going for singles, and not a home run. Based on Nilles above representations, the Investor
23 decided to invest an addition \$50,000 in Nilles' investment contracts. On or about April 9, 2019, the
24 Investor gave Nilles a \$50,000 cashier's check to further fund the Investor's investments. The
25 Investor's cashier's check was received by Nilles and the funds were deposited into Nilles' personal
26 bank account.

1 16. On or about July 1, 2019, Nilles provided the Investor with a 2nd Quarter Report,
2 which purported to summarize the performance of the Investor's investments in Nilles' trading
3 account. The 2nd Quarter Report was devoid of any trading account number or the name of Nilles'
4 trading account. Also, the 2nd Quarter Report did not indicate the broker-dealer that held Nilles'
5 trading account. According to the 2nd Quarter Report, the Investor's investments had three
6 consecutive months of gains, ranging from 1.77 to 9.81% Further according to the 2nd Quarter Report,
7 The Investor's total investments in the amount of \$75,000 grew to \$88,107.

8 17. On or about September 30, 2019, Nilles provided the Investor with a 3rd Quarter
9 Report, which purported to summarize the performance of the Investor's investments in Nilles'
10 trading account. The 3rd Quarter Report neither contained a trading account number nor the name of
11 Nilles' trading account. Also, the 3rd Quarter Report did not indicate the broker-dealer that held
12 Nilles' trading account. According to the 3rd Quarter Report, the Investor's investments had three
13 consecutive months of gains, ranging from 1.44 to 2.30% Further according to the 3rd Quarter Report,
14 The Investor's total investments in the amount of \$75,000 grew to \$93,169.

15 18. Nilles created the Quarterly Reports that were provided to the Investor. The Quarterly
16 Reports covered the time-period from December of 2018, through September of 2019. During the
17 relevant time-period, Nilles through his Quarterly Reports represented to the Investor that the
18 Investor's investments were making gains. When in fact, Nilles lost a substantial amount of money
19 in his trading account, during the said time-period.

20 19. Nilles covered the losses in his trading account to make it appear that the Investor was
21 making money off his investments. Nilles' goal was "to make money to bring the [trading] account
22 back to health."

23 20. According to Nilles, in December of 2018, Nilles got "beat up" in the market and
24 started shorting the market aggressively. Between December of 2018, through April of 2019, Nilles
25 "got wiped out" and "lost everything." And, in or around October of 2019, Nilles stopped trading in
26 his trading account, because "the market spiked ... and the losses grew exponentially on the tail end."

1 21. In November of 2019, Nilles represented to the Investor that he had lost all the
2 Investor's money. Further, Nilles stated that he lost all his money and all his family's money that he
3 was in charge of investing. Nilles' trading account lost money and got "blown up," as a result of his
4 "poor risk management." Nilles further represented to the Investor that Nilles had no more money
5 left in Nilles' hedge fund account. When in fact, since at least 2012, Nilles has not managed a hedge
6 fund." Instead, from at least October of 2018, through at least October of 2019, Nilles traded in a
7 subaccount of a retail account that was set up and owned by another individual.

8 22. Prior to the Investor meeting Nilles, the Investor had no investment experience. Nilles
9 never inquired about the Investor's prior investment experience, or risk tolerance. The Investor's
10 only in the role in these investments was to provide capital. The Investor gave Nilles funds for the
11 sole purpose of investing on the Investor's behalf, and the Investor expected to receive a profit from
12 his investments. The Investor had "zero" discretion on how Nilles was supposed to invest the
13 Investor's funds in the stock market. At all times relevant, the Investor relied on Nilles to provide
14 the Investor with updates on his investments.

15 23. The Investor invested a total amount of \$75,000 and has neither received any returns
16 on his investments nor has he received a return of his principal investments.

17 **B. Nilles' misuse of the Investor's funds**

18 24. From December of 2018, through April of 2019, the Investor invested a total amount
19 of \$75,000 in Nilles' investment contracts. At all times relevant, the Investor's funds were received
20 by Nilles and/or deposited into Nilles' personal bank accounts held in Arizona at Wells Fargo Bank,
21 N.A. Nilles was the sole signatory of his personal bank accounts.

22 25. Nilles represented to the Investor that Nilles would allocate all of the Investor's funds
23 into Nilles' trading account to invest in the stock market on behalf of the Investor. The Investor never
24 authorized Nilles to use any portion of the Investor's funds on personal expenses or expenses not
25 related to the Investor's investments. However, Nilles misused a significant portion of the Investor's
26 funds on personal expenses and/or expenses not related to the Investor's investments.

26. During the relevant time-period, Nilles misused a significant portion of the Investor's funds on the following: (1) At least \$51,500 for debt payments to an individual; (2) At least \$6,900 for credit card and consumer finance payments; (3) At least \$1,251 on retail purchases; (4) At least \$1,098 on grocery shopping and at gas stations; (5) At least \$809 for payments to a debt relief company; (6) At least \$740 on utilities; (7) At least \$551 on ATM cash withdrawals; and (8) at least \$468 at restaurants.

C. Nilles' tax liens

27. In April of 2008, a federal tax lien was filed against Nilles in the amount of \$93,989. In January of 2009, another federal tax lien was filed against Nilles in the amount of \$91,931. In January of 2010, a third federal tax lien was filed against Nilles in the amount of \$17,270.

28. In March of 2009, the state of California filed a tax lien against Nilles in the amount of \$29,207.

29. At the time of the Investor's investments, Nilles still owed approximately \$200,000 on these tax liens. Nilles failed to disclose the tax liens to the Investor.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

30. From at least December of 2018 through at least April of 2019, Respondent offered or sold securities in the form of investment contracts, within or from Arizona.

31. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

32. This conduct violates A.R.S. § 44-1841.

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V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

33. Respondent offered or sold securities within or from Arizona while not registered as a dealer or salesman pursuant to Article 9 of the Securities Act.

34. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

35. In connection with the offer or sale of securities within or from Arizona, Respondent directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondent's conduct includes, but is not limited to, the following:

a) In December of 2018, Nilles misrepresented to the Investor that for the past twenty-years he has never lost money in the stock market. When in fact, in 2009, Nilles admitted he "got wiped out" and lost money in the stock market;

b) From December of 2018 through April of 2019, Nilles misrepresented to the Investor that Nilles ran a hedge fund, when in fact, Nilles has not managed a hedge fund since at least 2012;

c) Nilles misrepresented to the Investor that Nilles would allocate all of the Investor's funds in Nilles' trading account to invest in the stock market on behalf of the Investor. When in fact, Nilles misused a substantial portion of the Investor's funds on personal expenses or expenses/payments not related to the Investor's investment;

...

d) From December of 2018, through September of 2019, Nilles misrepresented to the Investor that his investments were making consecutive monthly gains in Nilles' trading account. When in fact, during the relevant time-period the Investor's investments suffered losses;

e) Nilles misrepresented to the Investor, via the Quarterly Reports that Nilles provided to the Investor that the Investor's principal investments in total amount of \$75,000 grew to \$93,169. When in fact, the Quarterly Reports did not indicate the substantial losses that Nilles sustained in his trading account from December of 2018, through September of 2019;

f) Nilles misrepresented to the Investor that Nilles would keep the Investor's funds in "light risk" investments. When in fact, in the beginning of 2019, Nilles started aggressively shorting the market and Nilles' "poor risk management" caused his trading account to sustain losses and get "blown up;" and

g) Nilles failed to disclose to the Investor Nilles' state tax lien and federal tax liens in the total unpaid amount of approximately \$200,000.

36. This conduct violates A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondent to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;

2. Order Respondent to take affirmative action to correct the conditions resulting from Respondent's acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondent to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and

4. Order any other relief that the Commission deems appropriate.

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VIII.**HEARING OPPORTUNITY**

Respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If the Respondent requests a hearing, the Respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet website at <http://www.azcc.gov/hearing>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/securities/enforcement/procedure>.

IX.**ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if the Respondent requests a hearing, Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days

1 after the date of service of this Notice. Filing instructions may be obtained from Docket Control by
2 calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/hearing>.

3 Additionally, the Respondent must serve the Answer upon the Division. Pursuant to A.A.C.
4 R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the
5 Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to
6 Michael Shaw.

7 The Answer shall contain an admission or denial of each allegation in this Notice and the
8 original signature of the Respondent or Respondent's attorney. A statement of a lack of sufficient
9 knowledge or information shall be considered a denial of an allegation. An allegation not denied
10 shall be considered admitted.

11 When the Respondent intends in good faith to deny only a part or a qualification of an
12 allegation, the Respondent shall specify that part or qualification of the allegation and shall admit
13 the remainder. Respondent waives any affirmative defense not raised in the Answer.

14 The officer presiding over the hearing may grant relief from the requirement to file an Answer
15 for good cause shown.

16 Dated this 9th day of July, 2021.

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19 Wendy Coy
20 Assistant Director of Securities
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